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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,383	04/09/2004	Christopher H. Porter	203/505 MB-104	1604
27224	7590	05/05/2006	EXAMINER	
ARTHUR FREILICH 9045 CORBIN AVE, #260 NORTHRIDGE, CA 91324-3343			AHMED, AAMER S	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/821,383

Applicant(s)

PORTER ET AL.

Examiner

Aamer S. Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 13-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's election with traverse of the election of species in the reply filed on October 3rd 2005 is acknowledged. The traversal is on the ground(s) that the characterization of multiple species is incorrect. This is not found persuasive because the groups refer to figures, which include different elements.

The requirement is still deemed proper and is therefore made FINAL.

Claim 10-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in the reply filed on October 3rd 2005.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 13, 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by de Groot et al EP 0367354. De Groot discloses a medical device and method of configuring a medical device comprising a stud (see figure 2) configured to project percutaneously outward through a patient's skin layers, the stud defining an outer end (30) and having a longitudinal peripheral surface (see figure 2) extending inwardly from the outer end (30), the peripheral surface having a longitudinal porous layer thereon for promoting soft tissue ingrowth; a shoulder

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surface (2) oriented substantially perpendicular to the stud peripheral surface and located inwardly from the stud outer end; and wherein the shoulder surface has a lateral porous layer thereon oriented substantially perpendicular to the longitudinal porous layer for promoting soft tissue ingrowth; and wherein at least one of the porous layers is characterized by a pore size within the range of 50 to 200 microns with a porosity of between 60 to 95% (col. 2 line 24) and the porous layers comprises a mesh of fibers (col. 2 line 26), the porous layers comprises a mass of sintered material (see abstract) from within a group comprised of titanium, nitinol, silver, and stainless steel and a polymeric material (col. 3 line 49). Furthermore, de Groot teaches that the medical device stud carries means for promoting healing (col. 3 line 55); and including a transitional layer (10) mounted on the stud between the stud outer end and the longitudinal layer and wherein the porous layers are formed of biocompatible material (col. 2 line 25).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over de Groot et al in view of Ellis U.S. Patent Number 4,648,391. De Groot et al discloses the device as described above in reference to claim 1 but fails to explicitly disclose a cap configured for mounting on the stud outer end. Ellis describes a similar device with a cap (18). It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the device of de Groot et al by adding a cap as taught by Ellis in order to permit passage of air through, but restrict penetration of infectious organisms (col. 1 line 37).

Response to Arguments

Applicant's arguments filed on February 21st 2006 have been fully considered but they are not persuasive. Applicant argues that the de Groot prior art reference fails to suggest the use of a porous layer on the longitudinally extending surface. However as stated above, de Groot does suggest a porous layer on the lateral surface (2).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aamer S. Ahmed whose telephone number is 571-272-5965. The examiner can normally be reached on Monday thru Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


A handwritten signature in black ink, appearing to read 'A. Ahmed', with a stylized flourish at the end.

A. Ahmed

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THOMAS J. HUGHES
SUPERVISOR OF PATENT EXAMINER
TECHNICAL CENTER 3763